

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed August 15, 2005. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1-3, 5, 9-11, 13, 17-19, 21, 25-27, 29, 33-35, and 37 stand rejected under 35 U.S.C. §102(e) as being anticipated by Kondo, et al. Independent Claims 1, 9, 17, 25, and 33 recite in general the ability to use the first and second signal characteristics to selectively perform one of the steps of selecting one of the first and third signal portions and combining the first and third signal portions, wherein combining includes adding or averaging the first and third signal portions. By contrast, the Kondo, et al. patent merely discloses alternating selection of data from one of a plurality of base stations in order to generate a combination signal having no errors. The portions of the Kondo, et al. patent cited by the Examiner are only directed to selecting one of two signals based on either no error or highest reception level if both signals have errors. Thus, the Kondo, et al. patent does not have a capability to add or average signal portions from different base stations let alone selectively perform one of the steps of selecting between signal portions or combining signal portions as provided by the claimed invention. Therefore, Applicant respectfully submits that Claims 1-3, 5, 9-11, 13, 17-19, 21, 25-27, 29, 33-35, and 37 are not anticipated by the Kondo, et al. patent.

Claims 4, 12, 20, 28, and 36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kondo, et al. in view of Kanerva, et al. Independent Claim 1, from which Claim 4 depends; Independent Claim 9, from which Claim 12 depends; Independent Claim 17, from which Claim 20 depends; Independent

Claim 25, from which Claim 28 depends; and Independent Claim 33, from which Claim 36 depends, have been shown above to be patentably distinct from the Kondo, et al. patent. Moreover, the Kanerva, et al. patent does not include any additional disclosure combinable with the Kondo, et al. patent that would be material to patentability of these claims. In addition, the Kanerva, et al. patent discloses the averaging over time of signal level measurements to determine whether to perform a handover, which is hardly the same as combining two signal portions through addition or averaging to generate an output as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 4, 12, 20, 28, and 36 are patentably distinct from the proposed Kondo, et al. - Kanerva, et al. combination.

Claims 6-8, 14-16, 22-24, 30-32, and 38-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kondo, et al. in view of Wang, et al. Independent Claim 1, from which Claims 6-8 depend; Independent Claim 9, from which Claims 14-16 depend; Independent Claim 17, from which Claims 22-24 depend; Independent Claim 25, from which Claims 30-32 depend; and Independent Claim 33, from which Claims 38-40 depend, have been shown above to be patentably distinct from the Kondo, et al. patent. Moreover, the Wang, et al. patent does not include any additional disclosure combinable with the Kondo, et al. patent that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claims 6-8, 14-16, 22-24, 30-32, and 38-40 are patentably distinct from the proposed Kondo, et al. - Wang, et al. combination.

This Response to Examiner's Final Action is necessary to address the Examiner's remarks concerning the claims and the cited art. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now

provided the current remarks concerning the claims and the
cited art.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants

A handwritten signature in black ink, appearing to read 'Charles S. Fish', with a stylized flourish at the end.

Charles S. Fish

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